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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)	
)	CC Docket No. 96-45
Appeal of Decision of the Universal Service)	
Administrative Company Denying Thumb Cellular)	Study Area Code: 319005
Limited Partnership's Request for Interstate Common)	
Line Support and Long Term Support)	SPIN: 143000883

To: Wireline Competition Bureau

APPEAL OF USAC'S DENIAL OF USF FUNDING

Filed By Thumb Cellular Limited Partnership

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Summary

USAC rejected Thumb Cellular Limited Partnership's March 2003 FCC Form 507 filing, and denied USF funding to Thumb Cellular Limited Partnership, because USAC received the FCC Form 507 on Monday March 31, 2003 rather than Friday March 28, 2003. USAC's position is that § 54.307(c) of the Commission's rules provides that Form 507 is to be filed "no later than March 30th of each year" that the rule must be interpreted to mean that the filing must be made by the last business day before March 30th when March 30th falls on a weekend or other holiday. Accordingly, USAC calculates the "filing date" for Thumb Cellular Limited Partnership's March 2003 FCC Form 507 filing as being Friday March 28, 2003.

USAC's interpretation of § 54.307(c) reads the Commission's automatic holiday extension filing rule, 47 C.F.R. § 1.4(j), out of existence. § 1.4(j)'s holiday filing extension applies "unless otherwise provided" and there is nothing in § 54.307(c) which states or which implies that the automatic holiday filing extension rule does not apply. USAC's decision fails to discuss the fact that the Commission has issued numerous orders directing USAC to use § 1.4(j) in calculating the filing dates of documents which are filed with it. USAC's denial of USF funding to Thumb Cellular Limited Partnership is contrary to the rules, Commission case law, and explicit instructions already provided by the Commission to USAC. Moreover, while USAC asserts that § 54.307(c) states a date certain and that there is no date computation involved thereby rendering § 1.4 somehow inapplicable, USAC "computes" the filing date to be March 28 rather than March 30 as specified in § 54.307(c). There is a "filing date" computation else USAC would not end up on a date which differs from the date specified in the filing rule. USAC's determination must be reversed and USAC directed to process Thumb Cellular Limited Partnership's FCC Form 507 filing.

Introduction

Thumb Cellular Limited Partnership (TCLP), by its attorney, pursuant to 47 C.F.R. §§ 54.719(c), 54.720(d), 54.722, and 54.723(a),¹ hereby appeals the May 7, 2004 decision (Attachment 1 hereto) of the Universal Service Administrative Company (USAC) which denied Thumb's December 23, 2003 *Request for Review of the Denial of USF Funding* (Attachment 2 hereto)² and which affirmed the USAC's High Cost Low Income Division's denial of TCLP's request for Interstate Common Line Support (ICLS) and Long Term Support (LTS). In support whereof, the following is respectfully submitted:

A. Question Presented On Appeal

1) Whether USAC correctly determined a) that it is not required to follow the FCC's longstanding holiday filing rule found at 47 C.F.R. § 1.4(j) when the "filing date" for FCC Form 507 falls on a "holiday" as defined in the Commission's rules and b) that when the FCC Form 507 "filing date" falls on a holiday FCC Form 507 must be received by USAC on the "last business day" prior to the "filing date" specified at 47 C.F.R. § 54.307(c).

B. Statement of TCLP's Interest In The Matter Presented on Appeal

2) In several phone conversations between USAC, TCLP, and undersigned counsel, USAC informed TCLP that USAC would not process TCLP's Spring 2003 application for ICLS and LTS on the ground that TCLP's FCC Form 507 was not timely received by USAC. TCLP has an interest in obtaining a reversal of that decision because USAC's finding prevents TCLP from collecting USF

¹ Collectively, these provisions authorize TCLP to file an appeal for *de novo* review of USAC's adverse decision within 60 days of USAC's subject May 7, 2004 denial letter.

² Attachment 2 contains supporting certifications.

funding for the pertinent period. While TCLP was permitted to seek review of this matter with the Commission without first seeking review from USAC, *see* 47 C.F.R. § 54.719(c), TCLP opted to provide USAC with an opportunity to review TCLP's written arguments in the event that resort to a formal legal proceeding before the Commission could be avoided.³ USAC discussed with undersigned counsel that the timing issue raised in this matter appeared to be one of first impression for USAC. However, as discussed below, and as discussed in TCLP's December 23, 2003 *Request for Review of the Denial of USF Funding*, TCLP provided precedent explicitly directed to USAC instructing USAC that when accounting form filing dates fall on Commission recognized holidays, filing of the accounting form on the next business day is appropriate because 47 C.F.R. § 1.4 applies to documents filed with USAC. USAC's May 7, 2004 letter fails to address TCLP's arguments.

C. Statement of Facts

3) In various conversations between USAC's representatives and TCLP and undersigned counsel on or about December 10, 11, 16, 2003, USAC advised TCLP that TCLP's FCC Form 507 was not being processed, and that TCLP could not receive USF funding for two quarters, an amount which is guesstimated for purpose of discussion as being in the neighborhood of \$350,000,⁴ for the

³ TCLP's filing for review with USAC tolled the time to file an appeal with the Commission and TCLP has 60 days from USAC's May 7, 2004 letter within which to appeal USAC's denial to the Commission. *See* 47 C.F.R. § 54.720(d). Pursuant to 47 C.F.R. § 54.719(a),(c) TCLP had the option of appealing USAC's High Cost Low Income Division's with USAC before seeking Commission review. Because TCLP need not have raised any issues with USAC in the first instance, but could have proceeded directly to the Commission, filing an appeal with USAC was not mandatory and following the optional appeal procedure does not raise any exhaustion issues. *See Atlantic Tele-Network, Inc. v. FCC*, 59 F.3d 1384, 1388 (D.C. Cir. 1995) citing *Darby v. Cisneros*, 113 S.Ct. 2539, 2545 (1993) ("courts may not 'require litigants to exhaust optional appeals as well.'"). *See also* 47 C. F. R § 54.723(a) (*de novo* review of disputed areas).

⁴ The amount cannot be known with certainty until USAC performs required calculations.

following reasons: 1) § 54.901 and §54.903 provide the authorization for TCLP to file FCC Form 507 to receive USF ICLS funding; 2) 47 C.F.R. § 36.312(a)(3) provides that the data submitted pursuant to § 54.901 *et seq.* is due “no later than March 30th of the existing year;” 3) USAC cannot process an FCC Form 507 received after March 30, 2003; 4) TCLP’s FCC Form 507 was delivered to USAC on Monday March 31, 2003;⁵ and 4) TCLP’s FCC Form 507 was due by Friday March 28, 2003, the last business day before March 30, 2003, because March 30, 2003, the filing date specified at § 36.312(a)(3), was a Sunday.

4) 47 C.F.R. § 54.307 authorized TCLP to file an FCC Form 507 with USAC to obtain USF and § 54.307 established March 30th as TCLP’s “filing date” under 47 U.S.C. § 1.4(e)(4). § 54.307(a) provides that “a competitive eligible telecommunications carrier serving loops in the service area of a rate-of-return carrier shall be eligible to receive Interstate Common Line Support [ICLS] for each line it serves in the service area in accordance with the formula in §54.901.” § 54.307(b) provides that “in order to receive support pursuant to this subpart, a competitive eligible telecommunications carrier [CETC] must report to the Administrator the number of working loops it serves in a service area pursuant to the schedule set forth in paragraph (c) of this section.” § 54.307(c) provides that data submitted under that section is due “no later than March 30th of each year.”⁶

⁵ TCLP’s filing date with USAC can be tracked by UPS Tracking Number A363 7967 153 at http://www.ups.com/WebTracking/track?loc=en_US.

⁶ Page 2 of USAC’s May 7, 2004 letter states that “TCLP, however, challenged USAC’s decision that Section 54.307(c) of the FCC’s rules establishes the filing date for Form 507.” TCLP did not make the challenge as phrased in USAC’s May 7, 2004 letter. As recited in TCLP’s December 23, 2003 *Request for Review of the Denial of USF Funding*, ¶¶ 3-5, USAC orally advised undersigned counsel that Section 36.312(a)(3) established the filing date for the accounting form and
(continued...)

5) TCLP informed USAC, first orally and then in its December 23, 2003 *Request for Review of the Denial of USF Funding*, ¶ 6, that 47 C.F.R. § 1.4(j) provides that when a "filing date falls on a holiday, the document shall be filed on the next business day." USAC responded orally that USAC is not the FCC and that USAC does not follow, and is not required to follow, the FCC's procedural rules found at § 1.4, and that it is required only to follow those rules specifically dealing with USF. TCLP responded, first orally and then in its *Request for Review of the Denial of USF Funding*, ¶ 6, that TCLP's filings are authorized by the FCC's rules and that USAC could not interpret the FCC Form 507 filing rule without reference to, and in conflict with, § 1.4. TCLP further advised USAC that the "no later than March 30th" filing language merely establishes a filing benchmark without specifying what happens when March 30 happens to fall on a weekend and that the FCC has long interpreted its filing rules as allowing the filing to be made on the next business day when an established filing date falls on a weekend. USAC and TCLP orally agreed that nothing in the FCC's filing rules or FCC Form 507 instructions indicates what happens when a filing date falls on a weekend.

D. Argument

6) The Instructions to FCC Form 507, at Items I, II, IV, VI, VII, X, XI, XII, explicitly state that FCC Form 507, or the pertinent data, is "filed" with USAC which serves as the FCC's USF administrator. 47 C.F.R. § 0.401 provides that "when an application or other filing does not involve the payment of a fee, the appropriate filing address or location is established elsewhere in the rules

⁶(...continued)

USAC's citation error was corrected in TCLP's December 23, 2003 review filing. While both USAC and TCLP now agree that § 54.307(c) is the pertinent filing rule, as discussed below, USAC finds § 1.4 to be inapplicable in calculating the applicable "filing date."

for the various types of submissions made to the Commission. The public should identify the correct filing location by reference to these rules." Accordingly, submission of FCC Form 507 to USAC is not an intermediate step in the filing process, filing FCC Form 507 with USAC terminated TCLP's FCC Form 507 filing process.

7) Item XII on FCC Form 507 states that "the form must be received at the address listed below [USAC's address] by the due date" and Item X on FCC Form 507 states that the FCC Form 507 filing "must be received by USAC by the due dates." However, like §§ 54.307(c), these statements do no more than establish a date certain filing deadline and the FCC establishes filing deadlines for nearly every filing which must be made regarding FCC regulated matters.⁷ These statements say nothing about what happens when a filing is due on a weekend. While USAC had earlier orally agreed that Form 507 says nothing about what to do when the filing is due on a holiday, USAC's May 7, 2004 letter fails to respond to TCLP's argument that § 54.307(c) is one of a number of rules which establish date certain filing dates and that such filings are due on the next business day when the "filing date" happens to fall on a Commission recognized holiday. *See* December 23, 2003 *Request for Review of the Denial of USF Funding*, ¶ 8.

8) USAC interprets the § 54.307(c) filing requirement to mean that when a March 30 filing date falls on a weekend, or presumably another Federal holiday, that the FCC Form 507 must be received by USAC no later than the last business day prior to March 30. USAC reached this conclusion because "the plain language of Section 54.307(c)(4) requires that TCLP and all other

⁷ Absent specific filing dates it might be that regulatees would not file required information. The FCC routinely establishes date certain filing requirements in order to compel the filing of information and the mere establishment of a filing date says nothing about the type of day, business or holiday, upon which that date happens to fall.

CETCs submit the required data '[n]o later than March 30th.'" USAC's filing rule interpretation and its filing date calculation incorrectly prejudices TCLP's right to collect the USF funds it applied for and reversal is warranted.

9) There is nothing in the FCC rules or the Filing Instructions to FCC Form 507 which indicates that the March 30 filing date found at § 54.307(c) is properly interpreted as meaning that filings have to be made on the last business day prior to March 30 when March 30 falls on a holiday as defined at 47 C.F.R. § 1.4(e)(1). § 1.4(e)(4) provides that "the term 'filing date' means the date upon which a document must be filed after all computations of time authorized by this section have been made." While § 54.307(c) established March 30 as the filing date, March 30, 2003 fell on a weekend holiday as defined by § 1.4(e)(1) and, therefore, the "filing date" was extended to March 31, 2003 by operation of § 1.4(j). While USAC orally stated that USAC is not the FCC and that it is not bound by the Commission's procedural rules, TCLP makes FCC filings in accordance with the FCC's rules and TCLP's FCC Form 507 was timely filed with USAC under the FCC's rules.

10) USAC's May 7, 2004 letter at 3, states that "TCLP's reliance on 47 C.F.R. § 1.4 is misplaced" because

Section 1.4 establishes rules "for computing the amount of time within which persons or entities must act in response to deadlines." Because the requirement in 47 C.F.R. Section 54.307(c)(4) establishes a specific filing date, there is no computation of time involved in determining the filing deadline.

USAC's approach to the Form 507 "filing date" calculation is not clear. First, § 1.4(j), by its express terms, applies "unless otherwise provided" in the pertinent filing rule and there is nothing in the filing rule found at § 54.307(c) which indicates that § 1.4 is inapplicable.

11) Second, USAC's assertion that "there is no computation of time involved in determining the filing deadline" is contradicted by USAC itself which calculates, albeit incorrectly, that the Form

507's "filing date" was "March 28" rather than the "March 30" date provided in § 54.307(c). USAC's "filing date" calculation approach obviously involves a "computation of time" even as USAC asserts there is no computation of time—if there were no "computation of time" USAC would not end up with "March 28" as the "filing date" in lieu of the "March 30" date specified at § 54.307(c). In determining filing dates § 1.4(j) has long provided for filing on the next business day when the "filing date" falls on a Commission recognized holiday such as a weekend. USAC "computes" the "filing date" to be March 28, thereby providing fewer filing days than provided by the Commission at § 54.307(c), by ignoring § 1.4(j) while TCLP "computes" the "filing date" by including the long standing holiday filing rule found at § 1.4(j). The better course is TCLP's which follows well established rules, case law, and policy.

12) USAC's May 7, 2004 letter fails to respond to TCLP's argument that, for instance, it might reasonably be argued that one could not utilize the "holiday" filing date rule in conjunction with a filing made pursuant to 47 C.F.R. § 54.802(a) which requires filings for Interstate Access Support to be made "on the last business day of March."⁸ The "last business day" of a month cannot fall on a holiday. When the FCC intends to limit the applicability of the filing date rule found at § 1.4, it clearly specifies the requirement, and has done in the same Part 54 rule part at issue instantly for another type of filing. Instantly, the FCC did not state that FCC Form 507 had to be filed with USAC "no later than the last business day prior to March 30 when March 30 falls on a holiday." The FCC's rules provide that FCC Form 507 are to be filed by March 30 without at all limiting the applicability of § 1.4's holiday filing date rule. *See* December 23, 2003, *Request for Review of the*

⁸ TCLP's filing was received by USAC on March 31, 2003. If § 54.802(a) were applicable instantly, TCLP's filing was made as of the last business day in March.

Denial of USF Funding, ¶ 10.

13) USAC's May 7, 2004 letter fails to respond to TCLP's argument that even in FCC comparative application cases, proceedings which involve mutually exclusive applications and which present situations in which application filing "cut-off" dates are strictly construed, *see Memorandum Opinion and Order*, 8 FCC Rcd. 3558 ¶ 3 (FCC 1993) ("the Commission strictly enforces its cut-off rules"), the Commission long ago determined that § 1.4's holiday filing date rule applied to the strictly construed "cut-off" date when the FCC established a date certain filing date to be "no later than Saturday, July 19, 1975." *See e.g., Communication Gaithersburg, Inc.*, 60 FCC 2d 537 ¶ 8 (FCC 1976). *See also, Assignment of Call Sign WPFX961*, 18 FCC Rcd. 1875 n. 12 (CWD 2003) (a petition for reconsideration is timely filed after the 30th day, on the next business day, when the 30th day falls on a weekend day). Even if the March 30 date specified at §54.307(c) were strictly construed, § 1.4 would still apply absent an explicit statement that § 1.4 were inapplicable.⁹ *See* December 23, 2003, *Request for Review of the Denial of USF Funding*, ¶ 12. The instant case concerns the filing of a routine, quarterly accounting form and USAC has failed to explain why the filing of a quarterly accounting form should be held to a stricter filing standard than is applied to mutually exclusive applications which most definitely must be filed by an established date certain.

⁹ *Implementation of Interim Filing Procedures for Filings of Requests for Review Federal-State Joint Board on Universal Service, Order*, 17 FCC Rcd. 339 n. 8 (FCC 2001) states that "because Commission offices were closed on September 11, 2001, documents that would otherwise have been due on that date were not due until September 12, 2001, pursuant to 47 C.F.R. § 1.4(e)(1)." This raises an interesting point regarding the rule interpretation USAC has applied. Let's assume that March 30 falls on a Wednesday and that a carrier completes FCC Form 507 delivery that day to USAC, but that such delivery is precluded by an early Spring snow storm which causes the Federal government to close on March 30. USAC's rule interpretation would require the document to have been filed with USAC on or before March 29 while the Commission's view is that filing deadlines are extended in the event of unforeseen government closings.

14) This is not a novel timing issue for USAC or for the Commission. USAC's May 7, 2004 letter fails to respond to TCLP's argument, *See* December 23, 2003, *Request for Review of the Denial of USF Funding*, ¶ 11, that the Commission has explicitly directed USAC that USAC must consider § 1.4 in determining the filing dates of documents filed with it. *See Request for Review of the Decision of the Universal Service Administrator by Xavier High School (Cedar Rapids, Iowa)*, 16 FCC Rcd. 3759 ¶ 3 (Acct. Pol. Div. 2000) ("Section 1.4(j) of the Commission's rules, however, provides that in cases where the close of the 30-day period falls on a holiday, the document shall be filed on the next business day."). The FCC has given USAC, on numerous occasions, the instruction that § 1.4 applies to USAC's filing date calculations in matters relating to USF funding issues. *See Request for Review of the Decision of the Universal Service Administrator by Soille San Diego Hebrew Day School (San Diego, California)*, 15 FCC Rcd. 24656 ¶ 3 (Acct. Pol. Div. 2000) ("Section 1.4(j) of the Commission's rules, however, provides that in cases where the close of the 30-day period falls on a holiday, the document shall be filed on the next business day."); *see also*, *Request for Review of the Decision of the Universal Service Administrator by Western Heights School District I-41 (Western Heights, Oklahoma)*, 15 FCC Rcd. 23818 ¶ 3 (Acct. Pol. Div. 2000); *Request for Review of the Decision of the Universal Service Administrator by Newton County School District (Decatur, Mississippi)*, 15 FCC Rcd. 23572 ¶ 3 (Acct. Pol. Div. 2000); *Request for Review of the Decision of the Universal Service Administrator by Corpus Christi Independent School District (Corpus Christi, Texas)*, 15 FCC Rcd. 23565 ¶ 3 (Acct. Pol. Div. 2000); *Request for Review of the Decision of the Universal Service Administrator by Gulfport School District (Gulfport, Mississippi)*, 15 FCC Rcd. 23532 ¶ 3 (Acct. Pol. Div. 2000); *Request for Review of the Decision of the Universal Service Administrator by Durham Unified School District (Durham, California)*, 15

FCC Rcd. 22201 ¶ 3 (Acct. Pol. Div. 2000); *Request for Review of the Decision of the Universal Service Administrator by Roosevelt Elementary School District 66 (Phoenix, Arizona)*, 15 FCC Rcd. 22183 ¶ 3 (Acct. Pol. Div. 2000); *Request for Review of the Decision of the Universal Service Administrator by Moon Area School District (Moon Township, Pennsylvania)*, 15 FCC Rcd. 22177 ¶ 3 (Acct. Pol. Div. 2000); *Request for Review of the Decision of the Universal Service Administrator by Bloomfield Public Library (Bloomfield, Iowa)*, 15 FCC Rcd. 22165 ¶ 3 (Acct. Pol. Div. 2000); *Request for Review of the Decision of the Universal Service Administrator by New Haven Public Schools (New Haven, Connecticut)*, 15 FCC Rcd. 18807 ¶ 3 (Acct. Pol. Div. 2000). The Commission has clearly, and repeatedly, instructed USAC to use § 1.4 in calculating USF filing dates and the Commission has instructed USAC that "where the close of the 30-day period falls on a holiday, the document shall be filed on the next business day." USAC's statement to TCLP that USAC is not required to follow the FCC's procedural rule found at § 1.4 is incorrect. *See* December 23, 2003, *Request for Review of the Denial of USF Funding*, ¶ 11.

15) Not intending to beat a dead horse, 47 C.F.R. § 1.815(a) provides that "each common carrier licensee or permittee with 16 or more full time employees shall file with the Commission, on or before May 31 of each year, on FCC Form 395, an annual employment report." While that rule specifies a "date certain" similar to that found in § 54.307(c) the Commission recently "reminded" the public that because May 31, 2004 falls on a Federal holiday this year, FCC Form 395 is due the next business day notwithstanding the fact that the rule provides a "date certain" filing date. *See Public Notice, Wireline Competition Bureau Reminds Licensees of Annual Employment Report Due Date*, released May 3, 2004, DA 04-1255 (Attachment 3 hereto). The *Public Notice* does not state that the rule is being waived for good cause as would be required if waiver were being made. *See*

47 C.F.R. §1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). The *Public Notice* merely notes the Federal holiday and draws the quite unremarkable conclusion that filings otherwise due on May 31 are due the next day because of the Federal holiday. *See also* 47 C.F.R. § 1.4(j), Example 14 ("The filing date falls on Friday, December 25, 1987. The document is required to be filed on the next business day, which is Monday, December 28, 1987.").

16) USAC's May 7, 2004 letter, at 3, acknowledges that § 54.307(c) establishes the pertinent "filing date." § 1.4(j) plainly provides that when "the filing date falls on a holiday, the document shall be filed on the next business day." 47 C.F.R. § 1.4(e)(4) provides that "the term 'filing date' means the date upon which a document must be filed after all computations of time authorized by this section have been made." USAC's May 7, 2004 letter does not point to any other FCC rule definition of the phrase "filing date." Whether or not USAC actually calculated a "filing date" is irrelevant because the specific "filing date" specified at § 54.307(c) clearly fell on a Commission recognized holiday and filing on the next business day was appropriate.

17) Absent explicit language in § 54.307(c), one simply cannot determine the applicable FCC Form 507 "filing date" without reference to § 1.4. Because § 54.307(c) merely specifies a date by which to file FCC Form 507 without stating that § 1.4 would not apply and without otherwise indicating that the public could not utilize § 1.4(j)'s generally applicable "holiday" filing rule, filers are entitled to rely upon the Commission's long standing holiday filing rule.

18) The court of appeals has determined that "fundamental fairness . . . requires that an exacting application standard, enforced by the severe sanction of dismissal without consideration on the merits, be accompanied by full and explicit notice of all prerequisites for such consideration." *Salzer v. FCC*, 778 F.2d 869, 871-72 (D.C. Cir. 1985). As discussed above, the FCC has not

provided notice that the March 30 deadline would be interpreted in the manner which USAC is applying instantly such that FCC Form 507 must be submitted to USAC on the last business day prior to March 30 if March 30 falls on a Federal holiday as defined in § 1.4. To the contrary, the Commission has explicitly and repeatedly directed USAC that § 1.4 applies in calculating the "filing dates" of documents filed with USAC. Because there was no prior notice of the interpretation that the USF benefits would be forfeited if TCLP did not file FCC Form 507 with USAC on the last business day prior to March 30, 2003, the funding denial violates TCLP's right to Due Process.

- 19) USAC's May 7, 2004 letter, at 3, attempts to address the lack of notice by stating that it is important to note that USAC supplied TCLP with actual notice (via letter) and constructive notice (via USAC's website) of the appropriate filing deadline and USAC's application of the rules under Part 54.

There are three substantial problems with USAC's notice discussion. First, TCLP's March 30, 2003 Form 507 filing was TCLP's first ICLS/LTS filing with USAC; TCLP has no record or recollection of receiving any letter notice from USAC; it is not clear how/why USAC would have sent such a notice to TCLP given that TCLP's initial Form 507 was not filed until March 31, 2003.

- 20) Second, TCLP did not notice any "constructive notice" on USAC's website. In any event, "full and explicit notice" is the applicable legal requirement, *Salzer v. FCC*, 778 F.2d 869, 871-72 (D.C. Cir. 1985), and USAC's proffer of a "constructive notice" is legally insufficient. The Commission provided "notice" that filing dates which fall on the weekend are extended to the next business day via § 1.4(j), via the litany of cases directed to USAC and cited above, via the Commission's action in processing mutually exclusive applications, and by the absence of any indication in any rule that FCC Form 507s must be filed "on the last business day prior to March 30 should March 30 fall on a holiday."

21) Third, the Commission's rules, cases, and policy statements are the things which govern FCC filing deadlines and it is the Commission, not USAC, which is looked to for "notice." USAC does not establish Commission policy and USAC is not vested with authority to change or reinterpret the applicability of § 1.4's holiday filing rule to document filing deadlines through the issuance of missives in any format. By rule USAC's funding denial decisions are reviewed *de novo* and USAC's interpretations of the FCC's filing date rules are not authoritative in this *de novo* appeal proceeding.

22) Because there has been a lack of prior, explicit Commission notice regarding the rule interpretation which USAC seeks to employ against TCLP in order to deny TCLP's application for USF benefits, the instant case is not an appropriate vehicle to impose any such interpretation upon TCLP's March 2003 FCC Form 507 application. To the extent that the Commission might determine that USAC's interpretation should apply to FCC Form 507 filings, such a determination could only be made on a going forward basis and not retroactively. However, absent a rule change, it is not at all clear that a pronouncement in the instant adjudication would provide the "full and explicit notice" required by Due Process if the well established filing rules remained unaltered.


E. Statement of Relief Sought

WHEREFORE, given the fact that § 1.4 applies to documents which are filed, given the § 1.4 document filing date calculation instructions the FCC has provided to USAC in numerous cases, given the lack of notice by the Commission of the rule interpretation being utilized by USAC, an interpretation which clearly conflicts with the FCC rules and case law, including instructions directed to USAC that USAC is to use § 1.4 to determine document filing dates, TCLP reasonably filed its FCC Form 507 with USAC on March 31, 2003 and it is respectfully submitted that USAC's funding denial decision should be reversed and that USAC distribute ICLS funds to TCLP as required by the

Commission's rules.¹⁰

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Respectfully submitted,
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Its Attorney

¹⁰ TCLP also respectfully requests that the Commission clarify whether USAC has a defined period of time that it may take to issue a decision concerning an appeal of a funding denial filed with it. 47 C.F.R. § 54.724 provides that the Commission will act upon funding appeals within 90 days, unless the period is formally extended for a period of up to another 90 days. TCLP sought review with USAC on December 23, 2003 and USAC did not answer until May 7, 2004, 135 days later.